



STATE OF NEW JERSEY

CIVIL SERVICE COMMISSION

In the Matter of Gremier Alemany
and Lucas Zarate, Fire Captain
(PM1051V), Paterson

CSC Docket Nos. 2018-3600
2018-3506
2018-1581

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Hearing Granted

ISSUED: September 6, 2018 (RE)

Gremier Alemany, represented by Ashley Whitney, Esq., and Lucas Zarate, represented by Robert Chewning, Esq., appeal the determinations by the Division of Administrative Services (Administrative Services) that they are disqualified from the examination for Fire Captain (PM1051V), Paterson for cheating. Additionally, Lucas Zarate appeals the administration of the examination. These appeals have been consolidated due to common issues.

The multiple-choice portion of the subject examination was administered on November 18, 2017 to 140 eligible candidates from Paterson, and to candidates from other jurisdictions. Following the examination, Zarate filed a test administration appeal stating that he did not have adequate desk space, other candidates were sick, and the room monitor interrupted him during the exam. In this regard, the Center Supervisor takes notes of any anomalies during a test administration. In this case, it was noted that, "Monitor noticed candidates Lucas Zarate and Gremier Alemany looking at each other's papers. One wrote large answers in book, the other looked." This report was brought to the attention of Administrative Services, who analyzed the totality of available information and disqualified the appellants. It is noted that Alemany also filed an appeal of test conditions, but did not pay the appeal filing fee. Thus, his file was closed.

In letters dated May 17, 2018, Administrative Services informed the appellants that:

An internal investigation was conducted by the Division of Administrative Services pertaining to your written examination for First Level Fire Supervisor (PM1051V). This investigation was performed in response to detected irregularities and alleged cheating by you during the examination administered on November 18, 2017. In all instances, applicants for an examination administered by the Commission are subject to *N.J.A.C.* 4A:4-2.10, which governs the conduct and security of applicants participating during an examination. Moreover, this regulation provides that the use or attempted use of any unauthorized aids, information or assistance, including copying or attempting to copy from or helping another applicant is strictly prohibited. In addition to the previously mentioned regulation, candidates for a Civil Service examination are required to sign a candidate pledge form, which you did on November 18th. By signing this form, you pledged not to discuss the content of the examination or communicate the content of the same with anyone. Pursuant to *N.J.S.A.* 2C:28.3, a candidate who signs this pledge and subsequently violates the same is subject to a crime of the fourth degree.

Based upon information provided by the monitor who assisted with administering the test on the above date, a comprehensive analysis of your testing materials was conducted. Our findings reveal an unusually high number of identical responses, both correct and incorrect responses, as that of the individual seated next to you. Because of this analysis as well as other contributing factors, your scores from PM1051V are being invalidated. This determination does not preclude you from applying for future promotional examinations administered by the Commission.

On appeal, Alemany requests a hearing on this matter to obtain necessary discovery. He denies allegations that he engaged in any improper conduct, and states that he prepared for the examination for two years and enrolled in test-taking classes. He mentions his test administration appeal and concludes that the crowded table did not allow for enough room between candidates, and a candidate sitting next to him was coughing, which led to a distracting environment.

Zarate maintains that at no point did he discuss or communicate the contents of the examination, or violate any regulations. He denies all alleged irregularities and cheating allegations based on the investigation. He also requests a hearing on this matter. He also requests that his name be restored to the list, he be appointed, and he be given all back pay, seniority status and counsel fees and costs, as well as all further relief as just, equitable and appropriate.

CONCLUSION

N.J.A.C. 4A:4-2.10(b)6 prohibits the use or attempted use of any unauthorized aids, information or assistance, including copying or attempting to copy from, or helping or attempting to help another applicant in any part of an examination or performance of work assigned. *N.J.A.C.* 4A:4-2.10(c) states that anyone participating in a prohibited action shall be disqualified from the examination and may be rejected from future examinations and subject to punishment as provided by law. *N.J.A.C.* 4A:4-6.1(a)6 permits the disqualification of an eligible who has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process. *N.J.A.C.* 4A:2-1.1(d) indicates that, where a material and controlling dispute of fact exists, a hearing is the appropriate forum for resolution.

The record establishes that appellants were scheduled to take the subject multiple-choice examination on November 18, 2017. After completing their examinations, each appellant filed a test administration appeal claiming that the seating was too close, and Zarate indicated that the room monitor interrupted him during the exam. *N.J.A.C.* 4A:2-1.6 states that a \$20.00 processing fee shall be charged for all appeals and requests for relief filed with the Civil Service Commission (Commission). As Alemany did not pay this fee, his appeal was dismissed. As a result of Zarate's test administration appeal, Center Supervisor and monitor notes were reviewed. The Center Supervisor indicated that the monitor noticed Zarate and Alemany looking at each other's papers. One wrote large answers in the book and the other looked. It is unclear why this issue was not addressed independently by Administrative Services earlier, however, Administrative Services performed an investigation after this was brought to its attention. The issue of test administration conditions must await a decision regarding examination security, which must be addressed regardless of when this issue was raised. *See In the Matter of Francis Gallagher, et al.* (MSB, decided November 17, 2004).

The appellants maintain that they were not cheating during the examination and request a hearing. The Commission has a duty to ensure the security of the examination process and to provide sanctions for a breach of security. *See N.J.S.A.* 11A:4-1(c). Anyone found participating in a prohibited action could be disqualified from the exam, rejected for future exams and subject to punishment as provided by law. When considering the overriding interests of examination security, it is imperative to disqualify candidates who could potentially breach examination security. As the record evidences a factual dispute as to whether Alemany and Zarate shared examination answers during the test administration, the matter should be reviewed in the context of a hearing at the Office of Administrative Law.

ORDER

Therefore, it is ordered that the issue of whether Gremier Alemany and Lucas Zarate shared test answers during the administration of the subject test is referred to the Office of Administrative Law for a hearing. If violations are established, the Administrative Law Judge should determine whether the sanctions applied by Administrative Services were appropriate or recommend further sanctions. Should he be disqualified, Zarate's appeal of test administration is moot, and should he not be disqualified, the Commission will decide the matter.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 5th DAY OF SEPTEMBER, 2018



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